

Ex. 14

IN THE UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

NEUROGRAFIX, a California )  
corporation; WASHINGTON )  
RESEARCH FOUNDATION, a )  
not-for-profit Washington )  
corporation, )

Plaintiffs, )

vs. )

SIEMENS MEDICAL SOLUTIONS )  
USA, INC., a Delaware )  
corporation and SIEMENS )  
AKTIENGESELLSCHAFT, a )  
German corporation, )

Defendants. )

AND RELATED CROSS-ACTION. )

No. CV 10-1990  
(MRP)(RZX)

VIDEOTAPED DEPOSITION OF  
MICHAEL BRANT-ZAWADZKI, M.D.

Los Angeles, California

Tuesday, August 16, 2011

Reported By:

LISA MOSKOWITZ, CSR 10816, RPR, CLR

Job No. 41126

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August 16, 2011

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9:55 a.m.

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Videotaped Deposition of MICHAEL

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BRANT-ZAWADZKI, M.D., held at the offices of

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Russ, August & Kabat, 12424 Wilshire Boulevard,

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12th Floor, Los Angeles, California, pursuant

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to Notice before Lisa Moskowitz, Certified

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Shorthand Reporter and Registered Professional

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Reporter of the State of California.

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13:03

BY MR. LoCASCIO:

Q. Dr. Bryan cites to several articles that talk about the ROI impacting quantitative measurements. You'd agree with him that the selection of the ROI impacts quantitative measurements of signal intensity; correct?

13:04

MR. FENSTER: Objection. Vague.

THE WITNESS: Well, I think that the articles are reversed in the context of those articles, are research articles written for the purposes of explaining a methodology towards a certain purpose in the research work and guiding other researchers as to how to reproduce that work, I think. I mean that's my sense of the context in which he made that statement or you made that statement.

13:04

13:04

BY MR. LoCASCIO:

Q. Do you agree that the method of ROI definition has a direct influence on quantitative outcome? Is that a true statement or not?

13:04

MR. FENSTER: Objection. Vague.

THE WITNESS: In the purest mathematical sense, that's a true

13:04

13:04

1 statement.

2 BY MR. LoCASCIO:

3 Q. And do you believe there's no  
4 practical influence on the quantitative  
5 outcome? Is that the basis for your sort of 13:04  
6 hedging on that a little bit?

7 MR. FENSTER: Objection. Vague,  
8 incomplete hypothetical.

9 THE WITNESS: So yes, I think that  
10 there is a difference between practical 13:05  
11 and purely mathematical. Maybe I can  
12 tell an anecdote to give you -- maybe  
13 it's a little bit off color, but I'll  
14 try to make it -- so if you ask an  
15 engineer and a physicist to approach the 13:05  
16 object of their most intense desire with  
17 a member of their opposite sex and you  
18 tell them you can only go halfway with  
19 each step, the physicist will say or the  
20 mathematician will say, "I'm giving up. 13:05  
21 I'll never get there." And the engineer  
22 will say, "Well, I calculate that in six  
23 steps I'll be there for all practical  
24 purposes."

25 So that's the difference between 13:05

13:05

1 absolute mathematical reasoning,  
2 quantitative, if you will, and  
3 practical; right? So if I choose to  
4 translate that or if I translate that  
5 into the current context, if I take 13:06  
6 three different ways of selecting region  
7 of interest, I may get to the 1.1  
8 conspicuity threshold 90 percent of the  
9 time with each of the different three  
10 methodologies. That would be the 13:06  
11 practical end result of not having a  
12 standard in a mathematical sense or  
13 quantitative sense for doing the  
14 calculations; right?

15 BY MR. LoCASCIO:

13:06

16 Q. But just as if you could take three  
17 different ways and get to 1.1 each way, you'd  
18 acknowledge that it's possible the math could  
19 work out that you do it once and you get 1.12,  
20 you do it once and you get 1.10, and you do it 13:06  
21 once and you get 1.08. That's possible as  
22 well. Fair?

23 MR. FENSTER: Objection.

24 Incomplete hypothetical.

25 THE WITNESS: Well, I think it's

13:06

1 Q. That's what this shows? 14:20

2 A. Yes. It speaks for itself.

3 Q. You looked at Dr. Bryan's images as  
4 well from his report; correct, sir?

5 A. Yes. 14:20

6 Q. I'll hand you what we'll mark as  
7 defendants 41.

8 (Defendants' Exhibit 41 was marked  
9 for identification.)

10 BY MR. LoCASCIO: 14:20

11 Q. And based on some of the earlier  
12 discussion today, I got the sense, sir, that  
13 sometimes you thought Dr. Bryan's ROI  
14 selections were not consistent with the  
15 teachings of the 360 patent, and sometimes they 14:20  
16 were. Is that correct?

17 A. Yes.

18 Q. Can you walk me through the images in  
19 Exhibit C and tell me where you think  
20 Dr. Bryan's ROI placements or sizes, et cetera, 14:21  
21 the selection of ROIs by Dr. Bryan are  
22 consistent with the teachings of the 360 patent  
23 and where they are not? Let me first ask are  
24 you capable of doing that as we walk through  
25 these? 14:21

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14:21

1 A. Yes.

2 Q. Can you do that for me? And perhaps  
3 the easiest way is just to refer to the figure  
4 on the bottom. So the first one is Exhibit C,  
5 figure 1. And the ROIs are conveniently 14:21

6 numbered. So you can just sort of and walk  
7 through them and tell me if they are consistent  
8 with the 360 patent or in your view an opinion  
9 not consistent with the proper selection of an  
10 ROI. 14:21

11 A. Right. So just as an example, ROI  
12 No. 3 -- the selection of ROI No. 3 or No. 2  
13 for that matter, neither one, shows what could  
14 be conceived of as the brightest area on an  
15 image. And Dr. Bryan, I think, would argue 14:22  
16 that this is an example of how the patent is  
17 nonspecific or whatever the right term is  
18 because it allows a calculation where  
19 conspicuity of the nerve is actually lower than  
20 the, quote, surrounding, unquote, tissue; 14:22  
21 right?

22 So to me that, again, is inconsistent  
23 because to me the understanding is you compare  
24 the conspicuity of the nerve with the nearby  
25 adjacent or surrounding tissue. So the more 14:22



1 appropriate region of interest in this case -- 14:22

2 I don't even know if Dr. Bryan chose one on  
3 this particular image that's the most  
4 appropriate. In fact, I would argue he didn't.

5 But that's an example of where, for the 14:22  
6 purposes of demonstration and argumentation,  
7 Dr. Bryan chose regions of interest that would  
8 dispel the patent.

9 Q. Let's do this in a more orderly  
10 fashion. Dr. Bryan identifies some as 14:23  
11 non-neural and some as nerve. Do you agree  
12 with his characterization of ROIs 1 through 11  
13 on Exhibit C as being reflective of neural or  
14 non-neural tissue?

15 A. In general. I don't know that I 14:23  
16 would select those same exact spots. But, you  
17 know, No. 5, No. 6, No. 7 are neural tissue.  
18 Again, we talked earlier about the most  
19 representative segment, and I would say that  
20 No. 5 may not be the most representative 14:23  
21 segment of neural tissue that one skilled in  
22 the art would choose if one were doing what is  
23 instructed by the patent. So, again, depending  
24 on which specific ones we look at.

25 As far as the non-neural tissue, I 14:24

C E R T I F I C A T E

STATE OF CALIFORNIA:

I, LISA MOSKOWITZ, CSR, RPR, CLR,  
shorthand reporter, do hereby certify:

That the witness whose deposition is  
hereinbefore set forth was duly sworn, and that  
such deposition is a true record of the  
testimony given by such witness.

I further certify that I am not related  
to any of the parties to this action by blood  
or marriage, and that I am in no way interested  
in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set  
my hand this 19th day of August, 2011.

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LISA MOSKOWITZ, CSR, RPR, CLR

Shorthand Reporter